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May 19, 2000

Carol Matthey
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

*RE: CC Docket No. 98-141, Response to SBC's Requests for Interpretation,
Waiver or Suspension of Merger Conditions Affecting the Ownership of
Plugs/Cards and OCDs*

Dear Ms. Matthey,

This written *ex parte* communication is submitted by Rhythms NetConnections, Inc., Covad Communications Company, and NorthPoint Communications, Inc. in connection with the Commission's review of the recent request for interpretation, waiver or modification of the Merger Conditions in order for SBC Communications, Inc. ("SBC") to proceed with its planned provisioning of the Broadband UNE service.¹ Because SBC proposes, in its request for waiver, to reverse the requirements of the separate affiliate as set forth in the SBC/AIT merger conditions, Rhythms, Covad and NorthPoint noted that granting the proposal without further study would undermine the public interest and defeat the benefits of the separate affiliate.² In the intervening period, SBC has done nothing to assuage these concerns – indeed, in public meetings with CLECs and in its filings before this Commission, SBC's comments exacerbate legitimate concerns about the bona fides of SBC's proposals. Accordingly, Rhythms, Covad and NorthPoint continue to believe that granting the request as presented would substantially undermine the Commission's work toward ensuring a robust, competitive environment for facilities based DSL competition.

Should the Commission decide to grant SBC's request, it is essential that SBC undertake to adhere to certain conditions that are designed to mitigate the harm that its waiver would wreak on facilities-based competition within the proposed network

¹ Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief of Common Carrier Bureau, Federal Communications Commission (Feb. 15, 2000) ("*February 15th Letter*"); Letter from Marian Dyer, Vice President - Federal Regulatory, SBC Telecommunications, Inc., to Anthony Dale, Accounting Safeguards Division, Common Carrier Bureau, Federal Communications Commission (March 1, 2000) ("*SBC March 1st Ex Parte*"); Letter from Austin C. Schlick on behalf of SBC Communications, Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-141 (April 6, 2000) ("*SBC April 6th Ex Parte*").

² Comments of DATA on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49, et al. (March 3, 2000); Reply Comments of DATA on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49, et al. (March 10, 2000).

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topology. To that end, Rhythms, Covad and NorthPoint have submitted the appropriate conditions as an attachment to this document.³

The implementation of the attached conditions will provide an adequate safeguard against any anti-competitive behavior. Specifically, the conditions address SBC's obligation within the new fiber-fed DLC network to offer CLECs nondiscriminatory interconnection arrangements and access to unbundled network elements. The network topology proposed by SBC involves specific collocation and unbundling obligations, which must be clarified by the Commission. Furthermore, the conditions protect against the underutilization of the functional capabilities of the equipment SBC plans to deploy for its Broadband UNE. Under these conditions, the Commission can preserve the flexibility and capability of the equipment deployed in Project Pronto to support competitive advanced services.

The Commission must preserve its authority to ensure a non-discriminatory, competitive telecommunications market and explicitly affirm that its conclusion on the narrow issues presented by SBC's request remain subject to any further Commission action regarding competitively neutral network architecture. SBC has submitted several filings outlining its proposal, which collectively fail to evidence nondiscriminatory provisioning of the Broadband UNE, or to address the numerous technical and operational questions posed by the CLECs. If the Commission determines that further investigation into the technical and operational aspects of the fiber-fed network architecture are necessary to preserve facilities-based competition, any action taken on SBC's current request can carry no consequences in such an investigation.

Respectfully submitted,

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³ These conditions are, in response to the Commission's request, detailed in nature, and address specific issues that have arisen during the course of our review of SBC's proposal as well as its comments in public meetings regarding the implementation of the proposal.

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**NECESSARY CONDITIONS TO FCC GRANT OF TEMPORARY WAIVER
ALLOWING SBC ILECS TO OWN ATM SWITCHES/OPTICAL CONCENTRATION
DEVICES AND ADLU DLC LINE CARDS**

1. The Commission must clarify that its grant of a temporary waiver allowing SBC ILECs to own ADLU Digital Loop Carrier system (“DLC”) plug-in line cards used to support both analog voice and ADSL-based advanced data services in no way affects, limits, or restricts the right and ability of CLECs to own a variety of DLC line cards supporting the full range of xDSL technologies offered by the DLC manufacturer, and the right and ability of CLECs to plug any such line cards into SBC ILECs’ DLCs via physical or virtual collocation, at the option of the CLEC.
2. The Commission must clarify that, notwithstanding its grant of a temporary waiver, the SBC ILECs must allow CLECs to physically and virtually collocate, in SBC ILEC DLC channel bank chassis located in controlled environmental vaults, huts or cabinets, plug-in line cards supporting any xDSL technology that is presumed technically feasible pursuant to FCC rules. Specifically, SBC must allow the installation of any CLEC-owned line card manufactured to technical specifications compatible with the DLC channel bank chassis (*e.g.*, line cards manufactured by the DLC vendor), regardless of whether SBC deploys service(s) based on such technology itself or on behalf of any SBC affiliate, or whether any SBC affiliate deploys service(s) based on such technology.
3. The Commission must clarify that, notwithstanding its grant of a temporary waiver, the definition of a UNE loop encompasses all loop facilities between an SBC ILEC central office termination/interconnection point and a demarcation point at an end user premises, and includes all copper and fiber facilities between these two end points, as well as any associated electronic equipment located in the central office and/or in outside plant locations, regardless of whether the electronic equipment in outside plant locations includes Digital Subscriber Line Access Multiplexer (“DSLAM”) functionality.
4. The Commission must clarify that, notwithstanding its grant of a temporary waiver, loops configured as fiber-fed DLC loops must be further unbundled by SBC ILECs pursuant to section 251(c)(3) of the Act, and offered to CLECs in their individual subloop components, including (1) the bandwidth required by CLECs on the fiber subloop between the termination/interconnection point at the central office and the line card side of the DLC located at a remote terminal (“RT”), (2) the DLC plug-in line card, and (3) the copper subloop between the DLC at the RT and the demarcation point at the customer premises.
5. The Commission must clarify that, notwithstanding its grant of a temporary waiver, a CLEC may purchase one or more fiber-fed DLC subloop components, at its option, and may combine any such subloop component(s) with its own equipment and/or facilities. A CLEC may connect the fiber subloop and the copper subloop by physically or virtually collocating a DLC plug-in card. If a CLEC purchases all three fiber-fed DLC subloop components for a particular loop (“fiber-fed DLC loop platform”), the SBC ILEC shall

not disassemble or disconnect the subloop components and/or require the CLEC to reassemble or reconnect the subloop components, except upon request from a CLEC.

6. The Commission must clarify that, notwithstanding its grant of a temporary waiver, a combined DSL/POTS DLC plug-in line card is subject to the unbundling requirements of section 251(c)(3) of the Act.
7. The Commission must clarify that, notwithstanding its grant of a temporary waiver, and pursuant to SBC's section 251(c)(3) unbundling obligation, SBC must provide CLECs with all technical capabilities associated with a fiber-fed DLC loop provisioned with an ADLU DLC plug-in line card, including, but not limited to:
 - a. the ability to specify any Asynchronous Transfer Mode ("ATM") Quality of Service ("QoS") class supported by the manufacturer of the ATM Switch/Optical Concentration Device ("ATM Switch/OCD") and ADLU DLC plug-in card, including (1) Constant Bit Rate, (2) Real-time Variable Bit Rate, (3) Non-real-time Variable Bit Rate, (4) Available Bit Rate, and (5) Unspecified Bit Rate.
 - b. the ability to establish multiple virtual circuits per port
 - c. the ability to provision all ADSL parameters (including, but not limited to, maximum and minimum line rates, target signal to noise margin, fast path and/or interleave path, interleave depth/delay, operating mode, and error thresholds)
 - d. the ability to monitor and troubleshoot ports, system cards, and other equipment for outages of all port-level conditions (port up/down, bit rate up/down, traffic cells received/transmitted per port, errors per port (*e.g.*, near end/far end, retrain number and type)
 - e. the ability to oversubscribe trunk capacity and meet service level agreement ("SLA") requirements without sharing bandwidth with other carriers.
 - f. the ability to monitor SLA parameters
 - g. the ability to access management software via API or similar interface
 - h. ATM-level provisioning of multiple ATM virtual circuits per port
8. The Commission must clarify that, notwithstanding its grant of a temporary waiver, SBC must allow CLEC, at CLEC's option, to (1) using SBC ILEC-provided tie cables, connect its facilities and equipment collocated at the SBC ILEC's central office to the ATM Switch/OCD in order to access the UNE loop or subloop; (2) order UNE transport from the SBC-ILEC, to be connected to the ATM Switch/OCD in order to access the UNE loop or subloop; or (3) order UNE transport from a third party carrier, to be connected to the ATM Switch/OCD in order to access the UNE loop or subloop.
9. The Commission must clarify that, notwithstanding its grant of a temporary waiver, SBC must provide the line sharing UNE to CLECs using the fiber-fed DLC loop configuration. This line sharing UNE shall use the same copper pair entering the end user premises as does the SBC ILEC analog voice service. At the SBC ILEC central office, this line sharing UNE shall be accessed by the CLEC at the ATM Switch/OCD in the same manner as described in Paragraph 8.

10. The Commission must clarify that, notwithstanding its grant of a temporary waiver, to the extent SBC seeks to transfer to any SBC affiliate any ATM/IP Switch(es)/OCD(s) and/or DLC line card(s) deployed, purchased, or installed by an SBC ILEC, that SBC affiliate shall be deemed to be a successor or assign of the SBC ILEC pursuant to section 251(h) of the Act and must provide CLECs with access to any such ATM/IP Switch(es)/OCD(s) and/or DLC line card(s), pursuant to section 251(c)(3) of the Act.
11. The Commission must clarify that, notwithstanding its grant of a temporary waiver, section 251(c)(2) imposes an independent obligation on SBC ILECs to permit technically feasible interconnection with the SBC ILEC network at remote terminals and other intermediate loop concentration or connection points.
12. The Commission must require SBC ILECs to offer all unbundled network elements discussed in these conditions, including the line sharing UNE and the fiber-fed DLC loop platform, to CLECs at prices that fully comply with the Commission's TELRIC pricing methodology.
13. The Commission must require SBC to maintain and support existing copper loops terminating in central offices with remote terminals in a condition that permits them to be used by competitors to provide DSL service. In addition, the Commission must clarify that, notwithstanding its grant of a temporary waiver, no customer currently served by any CLEC using xDSL technology over copper loop facilities may be migrated to fiber-based facilities without the express permission of the CLEC.
14. The Commission must require SBC to obtain the Commission's consent before retiring the separate data affiliate, and that SBC must make a showing that the DSL competitive landscape is sufficiently irreversible that the affiliate serves no significant further public policy or public interest purpose. In addition, the Commission must require that, notwithstanding its grant of a temporary waiver, all retail ISDN services must be provided through SBC's advanced data services affiliate, in order to ensure that all data services are provided in a nondiscriminatory manner.
15. The Commission must clarify that, notwithstanding its grant of a temporary waiver, when SBC acquires a DLC system, OCD, or other loop technology pursuant to this temporary waiver, it must use its best efforts to provide all features functions, and capabilities of that equipment to support unbundled access to that equipment, including acquiring intellectual property rights from the equipment manufacturer that would facilitate full CLEC access to the features functions and capabilities of that equipment.
16. All new remote terminals deployed after May 10, 2000 must be designed to accommodate collocation by at least five competitive local exchange carriers. Specifically, the remote terminals must permit at least five competitive LECs to collocate their own DSLAMs and multiplexing equipment. The competitive local exchange carriers' equipment, in turn, must be designed to be installed in remote terminals. (To the extent that traffic can be multiplexed using existing facilities in the equipment installed by the Incumbent LEC, space needs may be substantially reduced.)